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**From:**

**Sent:** Thursday, May 06, 2010 4:40:06 PM

**To:**

**Cc:**

**Subject:** RE: Injured spouse claim and 106(c) letter

Hi                      and                      :

We believe that there is no need to amend the IRM because the IRM currently requires the issuance of the Notice of Claim Disallowance in this case.

According to IRM 21.4.6.5.9.8(2)(b),

If IRS disagrees with the [injured spouse] claim (including the allocation), it issues a Notice of Disallowance starting a 2-year period under IRC § 6532(a) during which a taxpayer may file a tax refund suit.

Furthermore, the IRM provides for forwarding these cases to Appeals, when appropriate.

If the non-debtor spouse resubmits the Form 8379 with the required documentation for Appeals consideration during this period, AM [Accounts Management] may reconsider its rejection of the allocation before forwarding the new Form 8379 to Appeals. If AM accepts the resubmitted allocation it is unnecessary to forward the case to Appeals.

IRM 21.4.6.5.9.8.1(2)(b)

As noted in IRM 21.4.6.5.9.8(2)(b), *above*, issuing the Notice of Disallowance starts the running of the statute of limitations under section 6532(a). Second, allowing Appeals to review injured spouse cases helps to prevent costly and unnecessary litigation.

Historically, the processing procedure for Form 8379 has excluded the Appeals Office entirely. See Wade v. United States, 865 F.Supp. 216, 218 (D.N.J. 1994).

Consequently, if the injured spouse disagreed with the Service's determination regarding his/her status as an injured spouse and/or the allocation of the refund, then the taxpayer's only remedy was to go to court. See Id. Wade demonstrates that problems that can occur with such approach.

In Wade, the taxpayer filed a form 8379, requesting her portion of a tax refund. The Service Center in Holtsville, N.Y. denied her request. The taxpayer tried unsuccessfully through correspondence with and telephone calls to various Service personnel to have this decision reversed. However, since there was no formal appeals process, the taxpayer had no choice but to file suit in district court.

Not only did the court rule in her favor, but it also awarded attorney fees because it found the Service's position to be "baseless . . . from the start of the litigation." Id. at 220. In other words, the court made it clear that the Service should have "conceded" the validity of her claim before she ever filed her suit. Id.

Wade demonstrates the need for an appeals process to be available to taxpayers who receive a notice of denial or partial denial of their injured spouse claim. An appeals officer is trained to recognize those situations in which a taxpayer's claim has merit as well as those cases in which the Service has taken an indefensible position. Consequently, the appeals process provided for in IRM 21.4.6.5.9.8 and IRM 21.4.5.5.9.8.1 should be adhered to by the Service Centers so as to reduce the number of costly and unnecessary lawsuits brought against the Service.

This is not to suggest that the partial disallowance of the taxpayer's injured spouse claim is baseless. Indeed, I am sure that it is not. However, the IRS has to allow the taxpayer to have her procedural due process. As such, issue the partial disallowance letter. [REDACTED]

[REDACTED] I strongly recommend that you issue the disallowance letter as soon as possible [REDACTED]

If you have any other questions, or if I can be of further assistance, please contact me.

Regards,